

Unanimous Supreme Court reinstates anti-Muslim travel ban

By Tom Carter
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On Monday, the United States Supreme Court voted 9-0 to allow portions of President Donald Trump's anti-Muslim travel ban to go into effect. Seventy-two years after the Supreme Court's infamous 1944 *Korematsu* decision upholding internment camps, curfews and military exclusion orders targeting people of Japanese ancestry, the court is once again authorizing state discrimination based on nationality.

"Very grateful for the 9-0 decision from the US Supreme Court," Trump promptly gloated on Twitter. "We must keep America SAFE!"

During his 2016 presidential campaign, Trump declared that he would impose a "total and complete shutdown of Muslims entering the United States." He signed a presidential decree shortly after taking office that temporarily banned travel from seven Muslim-majority countries: Iran, Libya, Somalia, Sudan, Syria, Iraq and Yemen. This executive order was later "watered down" to exclude several of its more provocative provisions, such as official discrimination in favor of Christian refugees, and to lift the ban in relation to Iraq.

The announcement of the anti-Muslim ban prompted major demonstrations at airports across the country, with protesters cheering fiercely when each traveler or refugee made it past the immigration authorities. Despite the use of the indistinct phrase "travel ban" in the media, the executive orders are broadly understood—by supporters as well as opponents—to be motivated by anti-Muslim bigotry. According to recent polls, a clear majority of Americans oppose the ban.

Lower federal courts quickly entered various emergency orders blocking parts of the ban from going into effect before its constitutionality could be litigated, with many judges expressing themselves in extraordinary terms. Fourth Circuit Chief Judge Roger Gregory, a George W. Bush appointee, wrote that the executive order "drips with religious intolerance, animus, and discrimination." He questioned whether the Constitution "remains a law for rulers and people, equally in war and in peace."

Yesterday, the Supreme Court trampled over these lower court decisions, allowing part of the ban to go into effect pending a decision on the merits, which is expected in the upcoming October term.

In its order yesterday, the Supreme Court added the caveat that the travel ban "may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States," such as those who have family

members or professional or academic connections in the US. However, the Supreme Court ruled, the ban can be enforced with respect to all "other foreign nationals."

The caveat is a political compromise that does not have any legal significance. Its only purpose is to justify the cowardly capitulation by the court's so-called liberal wing. The historic significance of yesterday's decision is that Donald Trump's presidential decree attacking Muslims, which was drafted by his fascistic advisers Steve Bannon and Stephen Miller, will be allowed to go into effect with the approval of all nine justices on the Supreme Court.

The unanimous decision, delivered "per curiam," i.e., summarily by the court as a whole, bases itself on the "compelling need to provide for the Nation's security." As all nine of the Supreme Court justices well know, the idea that the ban is in some way related to national security is a fraud that does not stand up to any kind of rational scrutiny.

Trump campaigned for president on the basis of anti-Muslim hatred, repeatedly shouting about "extreme vetting" of Muslims at his rallies. His anti-Muslim executive orders, the crude handiwork of white nationalists that Trump has ensconced in the West Wing, are an effort to give legal sanction to this sentiment. Former New York City Mayor and Trump adviser Rudy Giuliani bragged publicly that Trump consulted with him about how to craft an anti-Muslim executive order that would withstand legal scrutiny.

Moreover, notwithstanding the contortions of Trump's lawyers, the ban makes no sense as a supposed "national security" measure. According to data gathered by Charles Kurzman of the University of North Carolina, none of the Muslim extremists who have engaged in terrorist attacks inside the United States since 2001 came from the six countries in question. Of the mere 36 extremists Professor Kurzman was able to identify, 18 were born in America and 14 emigrated as children, so the vast majority would not have been subject to any vetting procedure anyway.

The Supreme Court's caveat about "bona fide relationships" is entirely arbitrary and has no basis in the presidential decree or any other statute or rule. As right-wing justices Clarence Thomas and Samuel Alito wrote in a separate opinion, joined by Trump appointee Neil Gorsuch, the Supreme Court does not define what constitutes a "bona fide relationship" or a "credible claim" to such a relationship. Instead, these questions are delegated to Trump administration immigration authorities to apply as they see fit. If the Supreme Court is acknowledging President Trump's power to

issue the decree “to provide for the Nation’s security,” these three justices declared, then it should have allowed the anti-Muslim ban to go into effect in its entirety.

The participation of justices appointed by Democrats in this decision, including Obama appointees Elena Kagan and Sonia Sotomayor, explodes the pretenses of the Democratic Party to be interested in defending immigrants or democratic rights. Despite popular protests against the anti-Muslim ban, the Democratic Party has refused to mount any significant public campaign against Trump on this issue over the past six months. Instead, the party has focused all of its attention on denouncing Trump as insufficiently hostile to Russia, concentrating on forging alliances with the military and intelligence agencies as well as arch-reactionaries like John McCain.

The silence of the Democrats while the Trump administration attacks Muslims as part of a ruthless assault on democratic and social rights across the board exposes the party’s election-year posturing as worn-out lies worthy only of contempt. The Democratic Party represents war, inequality, reaction and repression.

Every election year, the American population is told that it must elect Democrats to prevent further shifts to the right on the Supreme Court. Whatever the ultimate fate of the anti-Muslim ban, yesterday’s decision should once and for all put such claims to rest.

Nor is this the only recent Supreme Court case in which the authoritarian and anti-democratic conclusion was reached by a unanimous vote. In 2014, at the request of the Obama administration, the Supreme Court decided by a vote of 9-0 to grant immunity to police officers who killed a fleeing motorist and his passenger with a hail of 15 bullets.

As of this writing, no prominent Democrat has breathed a word about yesterday’s decision. The Twitter feeds of Elizabeth Warren and Bernie Sanders are conspicuously silent about the Supreme Court’s attack on Muslims, as are many of the opinion columns of America’s major newspapers, which remain fixated on the Democratic Party’s anti-Russia campaign and the internecine strife roiling Washington.

Yesterday’s Supreme Court decision rests on a decade-and-a-half of uninterrupted efforts—through the Bush, Obama and Trump administrations—to dismantle democratic rights and erect the legal infrastructure of a police state. Building on the Bush administration’s assertion of unchecked “wartime” and “emergency” powers wielded by the president, the Obama administration asserted the power to conduct unlimited spying on the American and world population, as well as to assassinate anyone, anywhere in the world, by presidential decree.

President Obama shielded Bush-era torturers and their accomplices from accountability, insisted on immunity for killer cops, flouted international law, invoked “state secrets” to shield his administration’s activities from the public, imposed military-police “lockdowns” of entire urban areas, and vigorously persecuted anyone who dared to expose official criminality. Thanks to the political atmosphere and legal precedents built up through a decade-and-a-half of the “war on terror,” the Supreme Court now sits on its hands while the president persecutes

Muslims in the name of “the Nation’s security.”

At the same time that it allowed the anti-Muslim ban to go into effect, the Supreme Court signaled a further intensification of efforts to undermine the separation of church and state.

The court also ruled Monday that a Missouri church had a right to receive recycled tires to resurface its playground through a state assistance program, despite the Missouri constitution’s prohibition on conferring state benefits on religious institutions. While the stakes might appear relatively minor, the decision marks the first time in the Supreme Court’s history that it has decided that the US Constitution positively requires the state to provide public funds directly to a church.

Trump appointee Neil Gorsuch, for whom undermining the separation of church and state is a particular area of professional expertise, filed a concurring opinion in the Missouri case declaring that the church was the victim of “discrimination against religious exercise” and criticizing language in the majority opinion that would limit its future application.

Doubtless with the support of Gorsuch, the Supreme Court also announced Monday that it would hear the case of a Colorado cake decorator who refused to prepare a cake for a gay couple’s wedding. Lower courts already ruled that this bigoted gesture violated Colorado’s public accommodations law, which prohibits businesses from discriminating based on factors such as race, gender or sexual orientation. The cake decorator, Jack Phillips, is claiming that his act of discrimination represents “religious expression.”

Gorsuch has no problem with religious discrimination provided Muslims are the target. It is perhaps unfortunate for Gorsuch that the three decisions were all published on the same day. When Christians are denied the “right” to receive state funds or to discriminate against others, Gorsuch vibrates with righteous indignation. But Gorsuch would allow Trump’s measure persecuting Muslims to go into effect in its entirety.

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